IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE MR JUSTICE K.C.BHANU

WRIT PETITION No.16354 of 2004

Between:

M.Udayakumar, S/o.P.Munuswamy,

Aged about 54 years, R/o.8-89,

Ranganayaka Street, Gandhi Road,

Chittoor District

...PETITIONER

And:

1. The Chairman and Managing Director,

APSRTC, Musheerabad, Hyderabad

2. The Divisional Manager, APSRTC,

Chittoor Region Division,

Chittoor District

3. The Depot Manager, APSRTC,

Palamaner Bus Depot, Chittoor District

4. The Depot Manager, APSRTC,

Kuppam Bus Depot, Chittoor District

...**RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or writ more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in transferring the petitioner vide his proceedings dt.08.09.2004 as illegal, arbitrary, unjust, without jurisdiction and violation of their own circulars and consequently set

aside the proceedings dt.08.09.2004 issued by the 2nd respondent.

Counsel for the Petitioner: MR G.RAVI MOHAN

Counsel for the Respondent Nos.1 to 4: MR P.VINAYAKA SWAMY

The Court made the following:

ORDER:

The writ petition is filed challenging the action of the 2nd respondent in issuing office order dated 08.09.2004, transferring the petitioner from the 3rd respondent depot to the 4th respondent depot.

The case of the petitioner is that he was appointed as an Electrician on 03.04.1993 at Hindupur Depot. While the petitioner was working at 4th respondent depot, he was transferred to the 3rd respondent depot. Again he is being transferred to the 4th respondent depot within a span of two years. The 1st respondent has introduced a cycle system of transferring all the mechanical staff of various depots under the 2nd respondent for a period of one year and again they are being transferred to their original depots after working for a period of one year. The chain transfer system is only for long standing employees, who are having a standing of 7 years and above in a particular depot. The cycle system of mass transfer is without approval of the 1st respondent. According to him, the first batch of the mechanical staff of the 2nd respondent were transferred for a period of one year and again after completion of one year they were re-transferred back. The 1st respondent issued a Circular dated 20.04.1987 which discloses

that the transfer of long standing employees should be restricted for 5% or less than that too the transfers should be between in the month of March and June to avoid dislocation of work. But the 2nd respondent, contrary to the circular instructions, transferred all the mechanical and shramik staff of the 3rd respondent depot without any reasons. The

1st respondent issued a circular dated 26.04.1984 with regard to transfer of employees. As per the Circular orders, the employee who got long standing service of 7 to 8 years in a particular place should be transferred. The 2nd respondent issued an Order dated 16.08.2004 transferring the petitioner from 3rd respondent depot to 4th respondent depot. Therefore, the said proceedings are illegal. According to the petitioner, he is a Class-IV and low paid employee, and a prior notice is required for making arrangements for the transfer and all the children of the petitioner are school going. He also stated that there are about 20 mechanics in the 3rd respondent depot and among them the petitioner is the senior most. Some mechanics by name (1) Shankar, (2) Jonson and (3) Ratnam who are all juniors to the petitioner are having long standing service. Therefore, the respondent should follow the last come first go method. The respondents failed to follow the guidelines issued by the Managing Director of the Corporation. Hence the present writ petition.

The respondents filed a counter affidavit stating that the impugned proceedings have been issued in view of the excess position of electricians at Palamaner Depot and short position at Kuppam Depot, and in order to avoid dislocation in the maintenance of work at Kuppam Depot, the said transfer was made. The petitioner was transferred to adjust that electricians at Palmaner and Kuppam Depots, but not cycle system of long standing staff as alleged by the petitioner. The transfer orders of the petitioner were issued purely on administrative grounds i.e., due to adjustment of work in between Palmaner and Kuppam Depots. There is no *mala fide* intention on the part of the transferring authority. The guidelines issued by the

Corporation are purely applicable to general transfers but not administrative nature of work. As the petitioner's services are required at Kuppam and more so there is excess position of electricians at Palmaneru and short position at Kuppam, the impugned proceedings have been issued. There is no infringement of any right of whatsoever in issuing the impugned proceedings. Hence he prays to dismiss the writ petition.

The learned counsel for the petitioner vehemently contended that the impugned proceedings have been issued in utter violation of Circular dated 26.04.1984 and 20.04.1987 and if any excess staff is required at a particular place, the juniors, working in that particular place can be transferred, but retaining some of the juniors of the writ petitioners, the present impugned proceedings have been issued, and therefore, there is *mala fide* action on the part of the respondents. Hence, he prays to quash the proceedings.

On the other hand, the learned standing counsel appearing for the respondents contended that in order to avoid dislocation in the maintenance work at Kuppam Depot and taking the excess position of electricians at Palmeneru Depot, some of the electricians have been transferred to Kuppam within the same district purely on administrative grounds and no *mala fides* can be attributed to the transferring authority and hence the impugned proceedings do not suffer from any incurable legal infirmities so as to call for interference by this Court.

There cannot be any dispute that the transfer is not only incident of service, but also one of the service conditions. The employee cannot be have any right to challenge the transfer order when it is based on administrative grounds, unless such transfer order is vitiated by *mala fide* action on the part of the transferring authority. The learned counsel for the petitioner placed strong reliance on two circular orders issued by the Corporation. Under Circular No.PD-3/84-85, dated 26.04.1984, instructions have been given, which reads as follows:

> "Within this broad frame work, taking all aspects into consideration, it is considered reasonable to fix the normal tenure of an employee at a place as

7-8 years for employees engaged in district field work or responsibility; 5-6 years in respect of supervisors and 3-4 years in respect of officers.

While the length of tenure is to be regulated as above, nothing prevents the management from transferring an employee before the completion of such tenure or retaining him at the same place beyond the tenure in administrative interest or in accommodation of a request of the employee for compassionate reasons."

So, the above provision makes it clear that an employee cannot be disturbed for a period of 7-8 years if he is engaged depot fieldwork. This will not confer absolute right to the employee to claim retention at a particular place for a period of 7-8 years. The Management was given power to transfer an employee before completion of such tenure in administrative interest. Therefore, Circular No.3/84-85, dated 26.04.1984 cannot give absolute right to the petitioner for retaining at a particular place for a period of 7 to 8 years. Further more, this is an administrative instruction given by the authorities. Such Administrative instructions, in the absence of any statutory rule, cannot confer any right to the employees.

The second Circular for which the petitioner placed reliance to challenge the impugned proceedings is PD-44/1987, dated 20.04.1987, where under certain guidelines were issued for transfer of long standing employees, which reads as follows:

"The transfers of long standing employees shall be restricted to 5% or the number required, whichever is less and should be made between March and June of every year to avoid dislocation of work and inconvenience to employees. Among long standing employees, persons with longest stay shall be transferred up to number required."

Again this only an administrative instruction that will not confer any right on the employees to claim as a matter of fact. Certain guidelines for transfer of employees on administrative grounds are enumerated in this Circular, which reads as follows:

"Employee is liable to be transferred:

1. Where there are specific adverse reports on the performance like chronic absenteeism, dislocation of services/work;
2. When an employee is involved in unruly behaviour pending or leading to

disciplinary action;

3. Where an employee is involved malpractices like money lending or running of private chit funds;
4. Wherever an employee is involved in an enquiry affecting his integrity or moral turpitude and his continuance is likely to result in tampering of evidence."

If any transfer is made contrary to those guidelines, employee is given a right to appeal to the higher authority within 15 days after issue of such transfer, and the officer to whom such representation is made, shall give his decision within a week after receipt of representation and there after his order shall be final.

Admittedly, the petitioner has not filed any representation before the higher authority. The contention of the respondents is that in view of the excess position of electricians at Palmaner Depot and short position at Kuppam Depot, and in order to avoid dislocation in the maintenance work at Kuppam depot, the petitioner was transferred. No *mala fides* can be attributed to the transferring authority. It is not a case of transferring authority to take vengeance or vindictive attitude towards the writ petitioner. As the petitioner has been transferred purely on administrative grounds, that too administration of work in between two depots, it cannot be said that the transfer orders have been vitiated. It also made it clear in the impugned proceedings that the petitioner is transferred and posted to Kuppam Depot on administrative grounds in view of the excess position of electricians at Palmaner depot and short position at Kuppam depot. No doubt, while making such adjustment, the longstanding of an employee at a particular place has to be taken into consideration. Whether some of the persons, namely, (1) Shankar, (2) Jonson, and (3) Ratnamm who are working in the 3rd respondent depot, are juniors to the petitioner and they are having longstanding service, which required to be considered by the higher authority, when the transfer order is made contrary to the Circular instructions. As already stated, the transfer is an incident of service and the employee cannot have any right to

retain at a particular place, when the transfer is made on administrative grounds. N o *mala fides* can be attributed to the transferring authority as stated in the affidavit filed in support of the writ petition.

The only objection raised by the writ petitioner is that his transfer is not in accordance with the Circular orders. In the absence of any *mala fides* on the part of the transferring authority, I am of the opinion that the impugned order, under challenge, does not suffer from any legal infirmities so as to call for interference. However, a right of appeal is given to the petitioner for filing an appeal before the higher authority within 15 days from the date of receipt of transfer orders, and on such representation, the same shall have to be considered by the higher authority within a week.

In the circumstances, it is desirable to direct the petitioner to file an appeal before the competent authority, giving reasons that his transfer order is passed in violation of Circular orders, and on such appeal, the higher authority shall dispose of the same within a week thereafter.

The Writ Petition is, accordingly, disposed of, to the extent as indicated above. No order as to costs.

Dated: 13.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Chairman and Managing Director,

APSRTC, Musheerabad, Hyderabad

2. The Divisional Manager, APSRTC,

Chittoor Region Division, Chittoor District

3. The Depot Manager, APSRTC,

Palamaner Bus Depot, Chittoor District

4. The Depot Manager, APSRTC,

Kuppam Bus Depot, Chittoor District

5. Two CD copies.